

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

EDWARD JOSEPH HYL A, JR.,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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CASE NO. 1:18-cv-1279

OPINION & ORDER
[Resolving Doc. [20](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this Social Security case, Plaintiff Edward Hyla, Jr., seeks approval for \$9,925.15 in attorney's fees.¹ Respondent Commissioner does not oppose.² This Court concludes that awarding \$9,925.15, or \$503.81 per hour, would be a windfall for the Plaintiff's attorney. Consequently, this Court **ORDERS** payment of attorney's fees at \$400 per hour for 19.7 hours totaling \$7,880.

I. Background

In 2018 and 2019, Plaintiff successfully challenged the Commissioner of Social Security's decision to deny her disability benefits.³ Consequently, this Court awarded the Plaintiff \$3,400.00 in attorney's fees under 28 U.S.C. § 2412.⁴ On remand, the Commissioner awarded the Plaintiff \$79,700.60 in past-due benefits.⁵ The Plaintiff now asks this Court to approve allotting 25% of the award, or \$9,925.15, to his attorney

¹ Doc. [20](#).

² Doc. [21](#).

³ Docs. [1](#), [17](#).

⁴ Doc. [19](#).

⁵ Doc. [20-1](#).

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because of their contingency fee agreement.⁶ The Plaintiff's attorney says he will refund their prior attorney's fees if this Court approves an award greater than \$3,400.00.⁷

II. Analysis

This Court must determine what is a reasonable attorney's fee in this case.

In a typical Social Security action, a plaintiff sues the Commissioner for denying a benefits claim. When a plaintiff wins, she receives a payment of "past-due benefits" totaling what she would have received were her claim not originally denied.⁸ Under [42 U.S.C. § 406\(b\)](#), an attorney may receive up to 25% of a past-due benefit award.

However, courts must review the reasonableness of contingency fees, even if they fall within the statutorily allotted amount.⁹

In the Sixth Circuit, there is "a rebuttable presumption that an attorney would receive the full 25% contingency fee under contract unless . . . the attorney would enjoy an undeserved windfall due to the client's large back pay award or the attorney's relatively minimal effort."¹⁰

Factors courts consider in determining whether a contingency fee payout constitutes a windfall include (1) "the standard rates applied to social security fee requests;"¹¹ (2) whether an award is more than twice the standard hourly rate;¹² and (3) the "the 'brevity' . .

⁶ The Administrative Law Judge previously approved \$10,000.00 in attorney fees under [42 U.S.C. § 406\(a\)](#). Doc. [20-2](#). Combined with the \$9,925.15 Plaintiff seeks now, the total attorney fee award would be \$19,925.15, or 25% of \$79,700.60.

⁷ Doc. [20](#) at 2.

⁸ [42 U.S.C. § 404\(a\)\(1\)\(B\)\(i\)](#).

⁹ [Gisbrecht v. Barnhart](#), 535 U.S. 789, 807 (2002).

¹⁰ [Hayes v. Sec'y of HHS](#), 923 F.2d 418, 419 (6th Cir. 1990).

¹¹ [Lasley v. Comm'r of Soc. Sec.](#), 771 F.3d 308, 310 (6th Cir. 2014).

¹² [Hayes](#), 923 F.2d at 422.

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. of the representation.”¹³ “If the benefits are large in comparison to the amount of time counsel spent on the case, a downward adjustment is . . . in order.”¹⁴

Here, the Plaintiff’s attorney would enjoy a windfall if this court approved a \$503.81 per hour rate. In Ohio, the standard billing rate for Social Security cases is \$336 per hour.¹⁵ Plaintiff’s request for \$503.81 per hour is approximately 150% of the standard rate. Additionally, although this Court acknowledges that the Plaintiff’s attorney succeeded, he only represented his client for 19.7 hours—a relatively brief amount of time.¹⁶ Therefore, the Court reduces the attorney’s fees to \$400 per hour for 19.7 hours totaling \$7,880.

III. Conclusion

Accordingly, this Court **ORDERS** payment of attorney’s fees at a rate of \$400 per hour for 19.7 hours totaling \$7,880.00. The Plaintiff’s attorney must also **REFUND** the Plaintiff the \$3,400.00 in attorney’s fees this Court previously awarded.

IT IS SO ORDERED.

Dated: June 29, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

¹³ *Lasley*, 771 F.3d at 310.

¹⁴ *Gisbrecht*, 535 U.S. at 808.

¹⁵ The Ohio State Bar Ass’n, *The Economics of Law Practice in Ohio in 2019*, at 45, available at : <https://www.ohiobar.org/membership/Practice-Management-Tools-Services/economics-of-law-practice-study/>. Paying the Plaintiff’s attorney \$400 per hour compensates them in the 95th percentile for Ohio social security cases.

¹⁶ Doc. [20-4](#).